

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. CV-14-187

COPY

STATE OF MAINE and CONNECTME)
AUTHORITY,)
)
Plaintiffs,)
)
v.)
)
BIDDEFORD INTERNET)
CORPORATION d/b/a GREAT WORKS)
INTERNET,)
)
Defendant.)

DEFENDANT'S ANSWER,
AFFIRMATIVE DEFENSES and
COUNTERCLAIM

Defendant Biddeford Internet Corp. doing business as Great Works Internet ("GWI"), states as its answer, affirmative defenses and counterclaim to the State of Maine and ConnectME Authority's ("Authority") (collectively "Plaintiffs") complaint dated September 8, 2014 as follows:

ANSWER TO COMPLAINT

PARTIES

1. GWI admits paragraph 1 of the complaint.
2. The allegations contained in paragraph 2 of the complaint state a conclusion of law to which no response is required. To the extent a response is required, GWI admits that the Authority was created by an act of the Legislature for the purposes stated in the act and that the act speaks for itself. GWI denies the remaining allegations contained in paragraph 2 of the complaint.
3. GWI admits that it is a corporation organized under the laws of the State of Maine with a place of business in Biddeford, Maine; GWI denies the remaining allegations of paragraph

3 of the complaint.

JURISDICTION AND VENUE

4. The allegations contained in paragraph 4 of the complaint state a conclusion of law to which no response is required. To the extent a response is required, GWI denies each and every allegation contained in paragraph 4 of the complaint.

5. GWI admits the allegations contained in paragraph 5 of the complaint.

STATUTORY BACKGROUND

6. The allegations contained in paragraph 6 of the complaint state a conclusion of law to which no response is required. To the extent a response is required, GWI states that the terms of 35-A M.R.S. § 9216(2) speak for themselves and, to the extent the allegations in paragraph 6 of the complaint differ from the terms of 35-A M.R.S. § 9216(2), GWI denies the allegations contained in paragraph 6 of the complaint.

7. The allegations contained in paragraph 7 of the complaint state a conclusion of law to which no response is required. To the extent a response is required, GWI states that the terms of 35-A M.R.S. § 9216(2) and (3) speak for themselves and to the extent the allegations in paragraph 7 of the complaint differ from the terms of 35-A M.R.S. § 9216(2) and (3), GWI denies the allegations contained in paragraph 7 of the complaint.

8. GWI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint, and therefore denies the same.

STATEMENT OF FACTS

9. GWI admits the allegations contained in paragraph 9 of the complaint.

10. GWI admits the allegations contained in paragraph 10 of the complaint.

11. GWI admits that from on or about May 10, 2010, GWI licensed dark strands of

“dark fiber” under a private license agreement between GWI and Maine Fiber Company, Inc., now known as Maine Fiber Company, LLC, (“Maine Fiber”). GWI otherwise denies the allegations contained in paragraph 11 of the complaint.

12. GWI admits that on or about June, 2012, it ceased to pay to Maine Fiber the amount stated on invoices it received from Maine Fiber for a “Broadband Sustainability Fee” because the “Broadband Sustainability Fee” was an illegal and discriminatory tax and no administrative process existed for GWI to recover the tax once paid. GWI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 of the complaint and so denies them.

13. GWI admits that its counsel sent a letter dated August 15, 2012 to the Office of the Attorney General and Authority protesting of the “Broadband Sustainability Fee” and requesting a review of the legality of the “Broadband Sustainability Fee.” GWI further states the letter speaks for itself and any attempt to characterize or paraphrase the contents or meaning of the letter which is inconsistent therewith is denied.

14. GWI admits that the Authority sent a letter dated April 22, 2014 to GWI. GWI further states the letter speaks for itself and any attempt to characterize or paraphrase the contents or meaning of the letter which is inconsistent therewith is denied.

15. GWI admits that it sent a letter dated May 8, 2014 to the Authority. GWI further states the letter speaks for itself and any attempt to characterize or paraphrase the contents or meaning of the letter which is inconsistent therewith is denied.

16. GWI denies each and every allegation contained in paragraph 16 of the complaint.

COUNT I

17. GWI repeats and reasserts its answers to paragraphs 1 through 16 of the complaint

as stated above as if fully set forth herein.

18. GWI denies each and every allegation contained in paragraph 18 of the complaint.

AFFIRMATIVE DEFENSES

1. The Plaintiffs' complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. The Plaintiffs' complaint is barred by the statute of limitations.

3. Plaintiffs lack standing to bring this action.

4. Plaintiffs lack legal authority to bring this action.

5. Plaintiffs lack legal authority to bring an action to collect monies on behalf of private incumbent local exchange carriers.

6. Plaintiffs have failed to include indispensable parties to this action.

7. Plaintiffs lack any authority to collect from GWI any "Broadband Sustainability Fee" under 35-A M.R.S. § 9216.

8. Plaintiffs' complaint is barred as contrary to public policy.

9. Plaintiffs' complaint is barred by lack of privity of contract.

10. Plaintiffs' complaint is barred by the doctrine of illegality.

11. The purported assessment of a "Broadband Sustainability Fee" under 35-A M.R.S. § 9216 violates Article IX of the Maine State Constitution and the equal protection clause.

12. Enforcement of the "Broadband Sustainability Fee" under 35-A M.R.S. § 9216 violates the principles of neutrality under 35-A M.R.S. § 9213 and therefore is illegal and against public policy.

13. The “Broadband Sustainability Fee” under 35-A M.R.S. § 9216 on its face and as applied is an unlawful tax on federally funded activities in violation of the separation of state and federal government and the United States Constitution.

14. Plaintiffs’ complaint is barred because the State may not impose a discriminatory tax or fee on federal property or on those who use federal resources.

15. The “Broadband Sustainability Fee” under 35-A M.R.S. § 9216 is an unlawful discriminatory charge imposed against only those persons who lease “federally supported” dark fiber and therefore is illegal. 35-A M.R.S. § 9216(2) and 35-A M.R.S. § 102(4-A).

16. 35-A M.R.S. § 9216 is vague and constitutes an unlawful delegation of power to an administrative agency and is therefore unconstitutional.

17. 35-A M.R.S. § 9216 is unlawful and unenforceable.

COUNTERCLAIM

COUNT I (REQUEST FOR DECLARATORY RELIEF)

1. Pursuant to Maine’s Declaratory Judgment Act, 14 M.R.S. §§ 5951 et seq, counterclaim plaintiff GWI seeks several determinations arising out of counterclaim defendant Authority’s attempt to enforce 35-A M.R.S. § 9216 and to collect from GWI any unpaid “Broadband Sustainability Fee.”

2. Under 14 M.R.S § 5954, this Court has jurisdiction to construe and/or determine the validity of 35-A M.R.S. § 9216.

3. GWI licenses strands of dark fiber from Maine Fiber which, on information and belief, owns and operates a dark fiber cable network located in Maine.

4. GWI does not license or lease any Authority property.

5. GWI does not lease any property from Maine Fiber.

6. Counterclaim defendant Authority asserts that under 35-A M.R.S. § 9216, it has the authority to collect from GWI any “Broadband Sustainability Fee” that GWI has not paid to Maine Fiber.

7. Neither 35-A M.R.S. § 9216 nor any other state law authorizes the Authority to collect from GWI any taxes, fees or charges, including the so-called “Broadband Sustainability Fee” not paid by GWI to Maine Fiber under its private license agreement with Maine Fiber.

8. A ripe controversy exists as to whether the Authority has the legal authority to collect from GWI any “Broadband Sustainability Fee” not paid by GWI to Maine Fiber.

9. Maine Fiber owns and makes available to license in Maine strands of dark fiber located within its dark fiber cable. Such licenses are made available to private and public persons, including communications service providers.

10. Numerous communications service providers in Maine including incumbent local exchange carriers own and make available to license or lease dark fiber cable and dark fiber strands.

11. Dark fiber is optical fiber infrastructure (cabling and repeaters) that is currently in place and available to be used but not in use.

12. Dark fiber conveys information in the form of light pulses so the "dark" means no light pulses are being sent.

13. The expansion of optical fiber infrastructure to unserved and underserved areas of Maine, including rural Maine, at the lowest cost, is the public policy of the State.

14. In 2009, GWI received a federal grant under Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat.115 (“2009 Federal Grant”).

15. The purpose of the 2009 Federal Grant was to expand optical fiber infrastructure to unserved and underserved areas in Maine to increase and improve communications services for businesses, institutions, and individuals.

16. In 2010, and as contemplated by the terms of the 2009 Federal Grant, GWI transferred the grant funds to Maine Fiber so that dark fiber infrastructure built and owned by Maine Fiber would be available on an equal and non-discriminatory basis to communications service providers.

17. The Authority was created in part to “stimulate investment in advanced communications technology infrastructure” in unserved or underserved areas of Maine.

18. The Authority is funded through a uniform assessment charged to all communications service providers in Maine which, if made, must be made on a “competitively neutral basis.”

19. Under the legislation creating the ConnectME Authority, the legislature established a nonlapsing fund to be administered by the Authority pursuant to 35-A M.R.S. § 9211(1).

20. Pursuant to 35-A M.R.S. § 9211(2), any assessment not to exceed .25% of the revenue received or collected for all communications services provided in the state by communications service providers must be made “on a competitively neutral basis.”

21. Pursuant to 35-A M.R.S. § 9211(2), no assessment could be made against a communications service provider without the adoption of substantive rules requiring additional legislative approval.

22. Pursuant to 35-A M.R.S. § 9211(3), communications service providers pass on any assessment to their customers in their monthly billings.

23. In this manner all communications service providers, including providers of dark fiber strands to the general public, and their respective customers, are treated equally under the statute.

24. Assessments made against communications service providers pursuant to 35-A M.R.S. § 9211 are deposited in a fund known as the “ConnectME Fund.”

25. The Authority is required to use funds collected in its ConnectME Fund to support the activities and projects of the Authority, including but not limited to, expanding dark fiber infrastructure to unserved and underserved areas of Maine.

26. The Authority is prohibited by law from using any revenue, regardless of its source, other than “in a competitively neutral fashion and without giving preference to any one form of technology over another.”

27. GWI is a communications service provider and at all relevant times has fully paid the Authority’s uniform assessment charged to GWI pursuant to 35-A M.R.S. § 9211(2) on all communications services it provided in Maine.

28. The Authority supported the 2009 Federal Grant.

29. The 2009 Federal Grant was entirely consistent with the Authority’s goal of expanding dark fiber infrastructure in Maine to unserved or underserved areas.

30. The 2009 Federal Grant was entirely consistent with the State’s goal of securing “reliable and sustainable forward-looking infrastructure that can meet future broadband needs” and with the State’s policy to “maximize federal grant resources and private investment opportunities to support the deployment of broadband infrastructure in unserved and underserved areas of the State.”

31. Using the 2009 Federal Grant, Maine Fiber expanded dark fiber infrastructure in Maine in a manner entirely consistent with the State's goals and policies but without the need of State funding or funding from the Authority's ConnectME Fund.

32. Several incumbent local exchange carriers objected to the use of the 2009 Federal Grant to expand dark fiber infrastructure in unserved and underserved areas of Maine and lobbied the Legislature to impose a special tax on Maine Fiber's customers, called a "Broadband Sustainability Fee," with the proceeds of the tax to be deposited in a special account to accessed and used just by the local incumbent local exchange carrier(s) to subsidize the incumbent local exchange carrier's expansion of dark fiber infrastructure in just the incumbent local exchange carrier's service territory.

33. As a result of the lobbying effort, 35-A M.R.S. § 9216 was enacted in 2009.

34. A true copy of 35-A M.R.S. § 9216 is attached hereto as Exhibit A.

35. Title 35-A M.R.S. § 9216(2) states in part: "An entity that purchases, leases, or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to broadband sustainability fees..."

36. The phrase "federally supported dark fiber" is defined in 35-A M.R.S § 102(4-B) as "'Federally supported dark fiber' means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications, the construction of which is financed in whole or in part with funds provided by a grant awarded before January 1, 2010 by the United States Department of Commerce, National Telecommunications and Information

Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).”

37. The phrase “dark fiber provider” is defined in 35-A M.R.S § 102(4-A) as “‘Dark fiber provider’ means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission;

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and

C. Does not transmit communications for compensation inside this State.”

38. By definition in the statute, the only “dark fiber provider” in Maine can only be, has been and remains as the date of this pleading, Maine Fiber.

39. The Authority did not request or recommend to the legislature that there be an imposition of a “Broadband Sustainability Fee” on Maine Fiber’s customers.

40. Accordingly, the statute created a different scheme for assessing, collecting and using the “Broadband Sustainability Fee” than the neutral scheme created for the ConnectME Fund.

41. The Maine Public Utilities Commission in a Report on the Plan to Reform Telecommunications Regulation in Maine, dated December 31, 2011 stated that the “Broadband

Sustainability Fee” imposed by 35-A M.R.S. § 9216 was anti-competitive and contrary to the stated goals and public policies set forth in 35-A M.R.S. § 9202-A.

42. The “Broadband Sustainability Fee” is not imposed on every entity that purchases, leases or otherwise obtains dark fiber in Maine.

43. The “Broadband Sustainability Fee” is imposed only on any entity that purchases, leases or otherwise obtains “federally supported dark fiber” in Maine.

44. The imposition of a “Broadband Sustainability Fee” on some but not all entities that purchase, lease or otherwise obtain dark fiber is discriminatory and not competitively neutral.

45. The Authority lacks the authority to assess and collect any tax or fees unless done so in a non-discriminatory, competitively neutral manner.

46. A dispute exists whether the Authority has the valid authority to assess and collect monies from some but not all entities that purchase, lease or otherwise obtain dark fiber in Maine.

47. Title 35-A M.R.S. § 9216(3) and (4) state in part that any “Broadband Sustainability Funds” collected by a dark fiber provider and remitted to the authority shall be deposited by the authority as follows: “Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204” and “[d]eposit 95% of the funds received under section 3 into the broadband sustainability fund established pursuant to section 5.”

48. Title 35-A M.R.S. § 9216(5) states in part that the funds deposited in the “broadband sustainability fund” are “for use in accordance with subsection 6” and that “[a]ll

funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.”

49. If the Authority had the right to compel payment of the Broadband Sustainability Fee, nothing in the statute provides a means for the customer to recover a payment wrongfully or inaccurately assessed, paid or collected.

50. Unlike the ConnectME Fund fee which is assessed by the Authority against all communications service providers, which may or may not pass the charge on to their respective customers, the Authority seeks to collect the Broadband Sustainability Fee directly against customers.

51. Title 35-A M.R.S. § 9216(6) does not make available any broadband sustainability funds in a competitively neutral fashion.

52. Title 35-A M.R.S. § 9216(6) does not maximize federal grant resources as it deters entities from using Maine Fiber’s dark fiber which in turn results in higher costs to consumers.

53. Title 35-A M.R.S. § 9216(6) is anti-competitive, against public policy and illegal.

54. The Authority lacks the legal authority to use any revenue “from any assessment, transfer of funds, lease, assignment, rental agreement or other disposition or any other revenue” other than in a “competitively neutral fashion.”

55. Title 35-A M.R.S. § 9216(6) requires the Authority to “provide incumbent local exchange carriers a right of first refusal to access the broadband sustainability fund established pursuant to subsection 5.”

56. Title 35 M.R.S. § 9216(6) requires the Authority to only allow incumbent local exchange carriers access to the broadband sustainability fund established pursuant to subsection 6.

57. The Authority lacks any ability to allow all other communications service providers seeking to expand to unserved or underserved areas of the State, excluding incumbent local exchange carriers, from access to the broadband sustainability fund established pursuant to 35 M.R.S. § 9216(6).

58. GWI is a communications service provider in Maine.

59. For purposes of the Broadband Sustainability Fee, GWI is treated as a customer.

60. Incumbent local exchange carriers are communications service providers in Maine.

61. Incumbent local exchange carriers are competitors of GWI.

62. A dispute exists whether the Authority has the authority to use any revenue it collects or is remitted to in a manner that favors some competitors over others.

63. A dispute also exists whether the “Broadband Sustainability Fee” is an unlawful, discriminatory tax, unconstitutional under Maine’s Constitution.

64. A dispute also exists whether the “Broadband Sustainability Fee” is an unlawful and discriminatory tax just on federally funded activities in violation of the separation of powers between the state and federal governments as established in the United States Constitution.

WHEREFORE, GWI requests the court issue judgment in its favor and against Plaintiffs State of Maine and ConnectME Authority declaring *inter alia* that:

(a) Plaintiffs lack the authority to collect any unpaid “Broadband Sustainability Fee” from Maine Fiber’s customers and on behalf of incumbent local exchange carriers;

(b) the Authority's attempt to collect and disburse funds from the "Broadband Sustainability Fund" not in a competitively neutral fashion and without the adoption of substantive rules approved by the legislature is *ultra vires*;

(c) the "Broadband Sustainability Fee" is an illegal and discriminatory tax and therefore unconstitutional;

(d) the "Broadband Sustainability Fee" is an illegal and discriminatory tax just on federally funded activities and is therefore unconstitutional; and

(e) 35-A M.R.S. § 9216 violates both the equal protection and due process clauses of the United States Constitution and Maine Constitution and therefore is unconstitutional;

(f) 35-A M.R.S. § 9216 is contrary to public policy, vague and constitutes an unlawful delegation of power to an administrative agency and therefore is illegal and unenforceable; and

(g) 35-A M.R.S. § 9216 is otherwise unlawful and unenforceable.

GWl also requests that the court enter such other and further relief as the court deems just, including equitable relief, and including an order that all money the Authority collected from Maine Fiber and paid to Maine Fiber for the period from about May, 2010 until about June, 2012 be returned to GWl, interest, costs and to the extent available, its legal fees.

COUNT II
(ACTION FOR MONEY HAD AND RECEIVED)

65. GWl repeats and realleges the allegations stated above in paragraphs 1 through 64 as if more fully stated herein.

66. From about May, 2010 until about June, 2012 GWl paid to Maine Fiber about \$15,000 in "Broadband Sustainability Fees."

67. As required by 35-A M.R.S. § 9216(3) Maine Fiber remitted to the Authority the approximate \$15,000 Maine Fiber collected from GWl in "Broadband Sustainability Fees."

68. There is no administrative process in 35-A M.R.S. § 9216, or in any other statute, which permits or requires GWI to pursue and exhaust through an administrative proceeding any "Broadband Sustainability Fees" invalidly collected.


69. The Authority has invalidly collected monies Maine Fiber collected from GWI for "Broadband Sustainability Fees" for the period from about May, 2010 until about June, 2012 which total about \$15,000.

70. The Authority has possession, custody and control over the "Broadband Sustainability Fund" established by 35-A M.R.S. § 9216(5).

71. GWI has been damaged by the Authority's wrongful and invalid collection of "Broadband Sustainability Fees" paid by GWI to Maine Fiber and remitted by Maine Fiber to the Authority which total about \$15,000.

WHEREFORE, GWI requests the court issue judgment in its favor and against Plaintiffs State of Maine and ConnectME Authority in an amount to be determined by the court, together with such other and further relief as the court deems just, including but not limited to equitable relief, interest, costs and to the extent available, legal fees.

Dated: October 7, 2014



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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES HEADING:
PL 1987, c. 141, Pt. A, §6 (new)
Chapter 93: ADVANCED TECHNOLOGY
INFRASTRUCTURE HEADING: PL 2005, c. 665, §3 (new)

§9216. BROADBAND SUSTAINABILITY FEE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "First assessment period" means the period:

(1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and

(2) Ending on the last day of the 60th month following the commencement under subparagraph (1). [2009, c. 612, §10 (NEW) .]

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2). [2009, c. 612, §10 (NEW) .]

C. "Second assessment period" means the period:

(1) Commencing on the first day of the month following the end of the first assessment period; and

(2) Ending on December 31, 2017. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

2. Broadband sustainability fee. An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to \$3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and [2009, c. 612, §10 (NEW) .]

B. During the 2nd assessment period, a monthly fee equal to \$2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

3. Collection. A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

[2009, c. 612, §10 (NEW) .]

4. Deposit. The authority shall:



A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and [2009, c. 612, §10 (NEW) .]

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

5. Broadband sustainability fund. The authority shall establish a broadband sustainability fund, separate and distinct from any other funds held or maintained by the authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest on funds in the fund remains in the fund for use in accordance with subsection 6. The authority may contract with an appropriate independent fiscal agent that is not a state entity to serve as the administrator of the fund. All funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.

[2009, c. 612, §10 (NEW) .]

6. Use of the broadband sustainability fund. The authority shall provide incumbent local exchange carriers a right of first refusal to access the broadband sustainability fund established pursuant to subsection 5 in accordance with this subsection.

A. The authority shall allocate funds in the broadband sustainability fund established pursuant to subsection 5 to each incumbent local exchange carrier in accordance with this paragraph. Each month, the authority shall allocate to each incumbent local exchange carrier an amount equal to the total amount deposited that month into the broadband sustainability fund multiplied by a fraction, the denominator of which is the total number of miles of federally supported dark fiber leased, sold or used in this State during the previous month and the numerator of which is the total number of miles of federally supported dark fiber leased, sold or used in that incumbent local exchange carrier's service territory during the previous month. Any accumulated interest in the fund must be allocated proportionally. Only those amounts allocated to an incumbent local exchange carrier under this paragraph are available for disbursement to that carrier pursuant to paragraph B. By December 31st of each calendar year, the authority shall make an accounting of the total funds allocated during that calendar year to each incumbent local exchange carrier under this paragraph, and if by December 31st of the following calendar year some or all of those funds allocated to a carrier are not disbursed to that carrier in accordance with paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund under this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW) .]

B. To receive a disbursement from the broadband sustainability fund established pursuant to subsection 5, an incumbent local exchange carrier must file with the authority a request for funds together with a certification indicating that the funds requested will be used to deploy broadband infrastructure in unserved areas within the carrier's service territory. The certification must include the projected cost for the project and the scope of work, which must indicate how the funds will be spent. Upon receipt of a request for funds accompanied by the required certification, the authority shall disburse the requested amount to the incumbent local exchange carrier up to an amount not to exceed the total amount allocated under paragraph A to the requesting carrier. [2009, c. 612, §10 (NEW) .]

C. An incumbent local exchange carrier may not expend funds received under paragraph B in a manner inconsistent with the certification provided by the carrier under paragraph B. The authority may audit the use by an incumbent local exchange carrier of funds disbursed in accordance with paragraph B. [2009, c. 612, §10 (NEW) .]

D. On the last day of the 12th month following the end of the 2nd assessment period, the authority shall transfer all funds remaining in the broadband sustainability fund established pursuant to subsection 5 to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund pursuant to this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

SECTION HISTORY

2009, c. 612, §10 (NEW) .

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